

**BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

In the Matter of)	Case No. 6139-8
)	Facility ID 152161
VERIZON WIRELESS)	
)	
Order Granting an Interim Variance)	
)	
Section 42350 of the California)	
Health and Safety Code)	
_____)	

[PROPOSED] FINDINGS AND DECISION OF THE HEARING BOARD

This petition for an interim variance was heard on the Hearing Board’s Consent Calendar on **October 16, 2024**, in accordance with the provisions of California Health and Safety Code Section 40826 and District Rule 510. The following members of the Hearing Board were present: Micah Ali, Chair; Robert Pearman, Esq., Vice Chair; Jerry P. Abraham, MD MPH CMQ; Mohan Balagopalan; and Cynthia Verdugo-Peralta. Petitioner, Verizon Wireless (hereinafter “Verizon Wireless” or "Petitioner"), represented by Ethan Rogers, did not appear. Respondent, Executive Officer, represented by Principal Deputy District Counsel Daphne Hsu, did not appear. The parties filed with the Hearing Board the Joint Stipulation to Place Matter on Consent Calendar, the Declaration of Zach Feingold, and the [Proposed] Findings and Decision of the Hearing Board. Upon stipulation by both parties, the evidence from the ex parte emergency variance, dated September 20, 2024, was incorporated by reference. The Hearing Board finds and decides as follows:

Nature of Business and Location of Facility

Petitioner operates a wireless telecommunications facility at 3000 Keller Peak Road, Big Bear City, California 92314 (the “Facility”), which provides cellular service to its customers. The facility runs on commercial electric power but the facility utilizes a propane-fired emergency generator to provide power during times of commercial power loss, maintenance and testing.

Equipment and Permit to Construct/Operate

The equipment subject of this petition consists of an emergency generator internal combustion engine (“ICE”) operated pursuant to Permit to Operate No. F94141, located at Facility ID No. 152161. The ICE is used to provide power when there is an interruption of commercial electric power by Southern California Edison (“SCE”). The ICE provides emergency backup power in the event of a power outage, which allows the Facility to continue uninterrupted to provide cellular service to its customers.

SUMMARY

Petitioner is in violation of District Rule 203(b) and Condition No. 7 of its Permit to Operate, and will achieve compliance when the renewal period begins on January 1, 2025, and the engine’s annual operation time allocation starts over. The Hearing Board granted petitioner an ex parte emergency variance from the requirements of Rule 203(b) and Condition No. 7 on September 20, 2024.

FINDINGS OF FACT AND CONCLUSIONS

Following are the facts and conclusions supporting the findings set forth in Health and Safety Code Section 42352 necessary to grant the variance. The Executive Officer did not oppose the granting of the interim variance. The hearing was bifurcated to

demonstrate that “good cause” exists to justify the holding of a hearing on an interim variance petition in the absence of notice to the public.

A. Good Cause Findings

- 1. Petitioner is in violation of Section 41701, or of any rule, regulation, or order of the District, or that such violation is imminent.**

Petitioner has exceeded its annual permitted operating limit of 200 hours for the IC Engine, as specified in Condition No.7 of Petitioner's P/O No. F94141. The current run time of the engine is 796 hours.

- 2. The circumstances leading to the violation could not reasonably have been avoided by Petitioner, or anticipated in sufficient time to provide for public notice of the variance hearing.**

Non-compliance is beyond the reasonable control of Petitioner because the Line Fire, which started on 9/5/2024, caused a commercial power failure to the area. Governor Newsom declared a State of Emergency for the Line Fire on 9/7/2024. The facility's emergency generator began operating nonstop since the outage and has exceeded the 200 hours annual operating limit due to the ongoing commercial power failure in the area.

- 3. Petitioner exercised diligence in petitioning for the interim variance and scheduling the interim variance hearing; “diligence in petitioning for the variance” shall mean that Petitioner filed a variance petition as soon as feasible after the time Petitioner knew or should have known that a variance would, more likely than not, be needed.**

Petitioner exercised diligence by filing for an Emergency Ex Parte, Interim, and Regular Variance on September 13, 2024. On September 13, 2024, the generator had already run 168 hours for the year.

- 4. A denial of the interim variance will result in either:
(a) An increase in the emissions of air pollutants, an adverse impact to air quality, and/or an adverse impact on public health or welfare; or
(b) An unreasonable and unavoidable adverse impact to Petitioner**

Denial of the variance would cause significant harm to the petitioner, as well as the public, and would create an unreasonable safety risk to the public.

Moreover, requiring compliance would result in the elimination of lawful business in that cellular service to the area would be materially and adversely impacted, including the ability to make 911 and other calls vital to public safety.

Upon finding Good Cause the Board then proceeded to the merits of the Interim Variance and the six (6) Findings.

B. Interim Variance Findings

a. The petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the District.

1. The equipment cannot be operated in compliance with District Rule 203(b), which requires compliance with permit conditions, because petitioner has exceeded its annual permitted operating limit of 200 hours per year (which includes no more than 50 hours in any one year for maintenance and testing purposes) for its engine as specified in Condition No. 7 of Petitioner's Permit to Operate No. F94141.

b(1). Non-compliance with District Rule(s) is due to conditions beyond the reasonable control of the petitioner.

1. Non-compliance is beyond the reasonable control of Petitioner because the Line Fire, which started on 9/5/2024, caused a commercial power failure to the area. Governor Newsom declared a State of Emergency for the Line Fire on 9/7/2024. The facility's emergency generator began operating nonstop since the outage and has exceeded the 200 hours annual operating limit due to the ongoing commercial power failure in the area.

On September 13, 2024, the generator had already run 168 hours for the year. As of October 9, 2024, the emergency generator has run 796 hours for the year.

b(2). Requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

1. Denial of the variance would cause significant harm to the petitioner, as well

as the public, and would create an unreasonable safety risk to the public. Moreover, requiring compliance would result in the elimination of lawful business in that cellular service to the area would be materially and adversely impacted, including the ability to make 911 and other calls vital to public safety.

c. The closing or taking would be without a corresponding benefit in reducing air contaminants.

1. Excess emissions are as shown below based on 24-hour operation of the emergency engine.

NOx: 5.95 lbs/day

CO: 7.93 lbs/day

VOC: 5.95 lbs/day

2. Significant harm to petitioner and public would outweigh the benefit to air quality if the emissions associated with the variance request were eliminated as a result of denying the variance.

d. The petitioner for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

1. Curtailment or shutdown of the ICE would not bring petitioner into compliance because petitioner has already exceeded the 200-hour operating limit for calendar year 2024 and provides critical cellular service to its customers.

e. During the period the variance is in effect, the petitioner will reduce excess emissions to the maximum extent feasible.

1. During the period of the variance, petitioner will reduce excess emissions to the maximum extent feasible.

2. Petitioner will only use the ICE in times of emergency and petitioner will limit the period of time needed to perform maintenance and testing to 1 hour per month.

3. Petitioner shall comply with the monitoring conditions set forth in the variance conditions.

f. During the period the variance is in effect, the petitioner will monitor or

otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District.

1. Petitioner shall maintain a run log of the hours of operation of the ICE during maintenance and testing, and if an emergency occurs, during emergency operation. Petitioner will make such records available to the District as described in the conditions below.

C. Petitioner petitioned for a regular variance, scheduled for December 11, 2024.

ORDER

THEREFORE, good cause appearing, the Hearing Board orders as follows:

A. Petitioner is granted an interim variance from Rules 203(b), for an Internal Combustion Engine (“ICE”){from Condition No. 7 of Permit to Operate No. F94141} for the period commencing October 16, 2024, and continuing through December 11, 2024, the scheduled Regular Variance Hearing date.

B. The variance granted herein is subject to the following conditions:

1. Petitioner shall limit the operation of the internal combustion engine (“ICE”) permitted under Permit to Operate No. F94141 emergency usage, and the ICE shall operate no more than 1.0 hour per month total for maintenance and testing time. Except as otherwise permitted here, Petitioner shall cease operation of the ICE.
2. Petitioner shall maintain a monthly operating log with data for the emergency ICE and shall send the records to the District by e-mail to Air Quality Inspector II, Alicia Green (agreeen@aqmd.gov) on the first Tuesday of each month. The operating log shall list all engine operations in the following areas:
 - a. Date and hours of emergency operation, specifying the cause of the emergency;

- b. Date and hours of all maintenance and testing operations;
 - c. Date and hours of any other non-emergency operation; and
 - d. Date and name of person(s) inspecting, testing and/or providing maintenance on the generator, including Petitioner's staff and/or third-party contractors.
3. Petitioner shall calculate, record, and report all excess emissions during the variance period to the Clerk of the Board by January 31, 2025. Fees are waived per Rule 303(p) and the Governor Newsom's Declaration State of Emergency.

BOARD MEMBER: _____

DATED: _____